

1 Honorable James L. Robart
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10 UNITED STATES DISTRICT COURT FOR THE
11 WESTERN DISTRICT OF WASHINGTON
12 AT SEATTLE
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15 UNITED STATES OF AMERICA,
16 Plaintiff,
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18 v.
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20 PASCALE McATEE,
21 Defendant.
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NO. CR16-322 JLR

GOVERNMENT SENTENCING
MEMORANDUM

23 The United States of America, by Annette L. Hayes, United States Attorney, and
24 André M. Peñalver, Assistant United States Attorney for the Western District of
25 Washington, files this sentencing memorandum.

26 **I. INTRODUCTION**

27 This matter is set for a sentencing hearing on July 10, 2017, at 9:30 AM.
28 Defendant Pascale McAtee is the former treasurer for the Sheet Metal, Air, Rail, and
Transportation Workers Local 161 (SMART LU 161). Over the course of four years,
McAtee embezzled \$82,903.66 from LU 161, and for that, she has pled guilty to union
embezzlement in violation of 29 U.S.C. § 501(c). The Plea Agreement was entered
pursuant to Rule 11(c)(1)(B), and pursuant to that Agreement, the government
recommends a sentence of ten months, and further requests two years of supervision. In
light of the Defendant's damage to LU 161 and its members, such a sentence is no more
burdensome than necessary to comply with the factors set forth in Section 3553(a).

II. FACTUAL BACKGROUND

A. Defendant's Fraud Against SMART's LU 161

SMART is a labor union that formed in 2008 with the merger of the United Transportation Union and the Sheet Metal Workers' International Association. SMART International has local unions around the country, including SMART LU 161, a small local of approximately 90 members, mostly working in transportation jobs in the Snohomish County area.

SMART International and LU 161 have a primary function of negotiating collective bargaining agreements for their members. In exchange for that work, the union supports itself through membership dues of \$47 per month, directly withdrawn from the paychecks of members.

Since 2004, Pascale McAtee has been employed as a shuttle driver of workplace shuttles in the Snohomish County area. Shortly after becoming a shuttle driver, McAtee also became a member of the LU 161. In 2010, she was elected to the position of Secretary-Treasurer, a position that includes the tasks of keeping minutes and managing the bank accounts for the local. Pursuant to the SMART constitution, all disbursements must be approved at monthly meetings, and all checks must be countersigned by the President and Secretary-Treasurer.

In 2011, McAtee started making unauthorized electronic transfers from LU 161's BECU account to her own account or to that of her husband. In 2011, these transfers (after accounting for her stipend) added up to \$12,276.97. In 2012, they ballooned to \$38,843.50. In 2013, they were \$4,266.15 and stopped after that. The total amount of unauthorized direct transfers between the accounts was \$53,830.00.

In addition to unauthorized electronic transfers, McAtee also wrote checks to herself from the LU 161 account. Even though the written policy of LU 161 required that the President countersign all checks, McAtee signed the checks on her own. As she moved away from the electronic transfers described above, she increased the number of unauthorized checks. In 2013, she wrote herself a single unauthorized check of \$600.00.

1 In 2014, she wrote a number of checks totaling \$17,887.12. In 2015, the year she stepped
 2 down following a union investigation, she wrote eight checks totaling \$8,604.18. In total,
 3 her unauthorized checks amounted to \$27,091.30.

4 Among her duties as Secretary-Treasurer, McAtee was responsible for completing
 5 Form LM-3, an annual report submitted to the Department of Labor. The LM-3 requires
 6 the local union to list all disbursements to its officers. For each year that she was
 7 Secretary-Treasurer, McAtee omitted the embezzled funds from the listed disbursements,
 8 and she signed the form under penalty of perjury.

9 In 2015, Miguel Araujo, an investigator for the national SMART Union,
 10 investigated McAtee. In keeping with SMART's bylaws, McAtee faced a tribunal. The
 11 tribunal reviewed Araujo's investigation and McAtee's responses to the evidence. Based
 12 on that review, the tribunal determined that McAtee had embezzled funds, and it ordered
 13 her to repay a portion of those funds. It also removed her from office in LU 161.

14 **B. Attempts to Avoid Responsibility**

15 Following the union investigation, McAtee has not only maintained her innocence,
 16 but also disparaged the union and government for holding her accountable for her crimes.
 17 As the victim statements indicate, many of McAtee's fellow union members have
 18 overheard her blame the union for the loss of funds and the government for targeting her
 19 based on her status as a foreign national and leveraging her immigration status against
 20 her.

21 The allegations against the union have further demoralized the union membership,
 22 as the victim statements indicate. That demoralization reached a nadir when McAtee led
 23 an effort to decertify the LU 161 in the summer of 2016. As explained in Gardner and
 24 Meadows's statements, the decertification effort was an "irrational plan to dissolve the
 25 Local Union 161" with the aim of making the "charges [] go away." The near-death of
 26 LU 161 has led to lower morale, as Gardner explains: "the[re] is no moral[e] left in the
 27 union."

1 **C. Charges and Guilty Plea**

2 On December 7, 2016, a Grand Jury charged McAtee with one count of
 3 Embezzlement from a Labor Organization, 29 U.S.C. § 501(c) and three counts of False
 4 Statements to a Government Agency, 18 U.S.C. § 1001, for false statements in her annual
 5 LM-3 reports. On April 7, 2017, McAtee pled guilty to her embezzlement charge.

6 **III. DEFENDANT'S CRIMINAL HISTORY AND ADVISORY RANGE**

7 The parties agree on the following advisory Guidelines calculation:

8 Base Offense Level, USSG § 2B1.1(a)	6
9 Loss Amount Greater than \$40,000, USSG § 2B1.1(b)(1)(D)	6
10 Acceptance of Responsibility, USSG § 3E1.1	[2]
11 Total Adjusted Offense Level	10

12 The parties agree that the Defendant falls into Criminal History Category I.
 13 With an adjusted offense level of 10 and Criminal History Category I, the Defendant's
 14 guideline range is 6-12 months.

15 **IV. GOVERNMENT'S SENTENCING RECOMMENDATION**

16 McAtee broke the trust of LU 161, stole \$82,903.66, and then did her best to
 17 destroy LU 161 to cover up her crime. A sentence of ten months is appropriate in light of
 18 the seriousness of the offense and to provide just punishment as well as to deter similar
 19 criminal conduct by others.

20 **A. Seriousness of the Offense and Need for Just Punishment**

21 Over the course of four years, using numerous bank accounts, wire transfers, and
 22 unauthorized checks, McAtee stole \$82,903.66 from LU 161, all while maintaining a
 23 position of trust as the bookkeeper ("[M]any of us looked up to her over time. We relied
 24 on her," Anderson wrote.)

25 LU 161 has about 90 members who support the union with payments of \$47 per
 26 paycheck. With numbers such as that, the theft of over \$80,000 has had a dire impact on
 27 the local. Since McAtee's scheme was uncovered, LU 161 has barely survived a number
 28 of challenges.

1 of hardships, from overdue taxes and penalties (directly tied to the bank account that
 2 McAtee drained), to the near rejection of the recent contract by a dejected membership, to
 3 the near decertification of the Local itself (instigated by McAtee in an attempt to avoid
 4 these charges). As is clear from these examples, the consequences, both for LU 161's
 5 effectiveness and the morale of its membership, has been out of proportion to the actual
 6 monetary loss. The Court should consider these additional factors in sentencing McAtee
 7 to ten months.

8 **B. Deterrence of Criminal Conduct**

9 McAtee was only able to continue with her crime because of the lack of oversight
 10 in LU 161. In such a small local, there was nobody to review her checks and bank
 11 statements. Those same circumstances apply to many small organizations and
 12 businesses, and they make for an easy victim. A sentence of ten months here may deter
 13 other bookkeepers and treasurers from following McAtee's example.

14 **C. Appellate Waiver**

15 As set forth in paragraph 14 of the Plea Agreement, Defendant has waived her
 16 right to appeal the sentence imposed in this case if the sentence does not exceed the
 17 applicable Guidelines range determined by the Court at the time of sentencing. If the
 18 Court imposes a sentence within the applicable Guidelines range or less, the government
 19 respectfully requests the Court notify the Defendant pursuant to Rule 32(j)(1)(B), that she
 20 has waived her appeal rights except as to the effectiveness of legal representation.
 21 Otherwise, the government requests the Court notify the Defendant of her right to appeal
 22 the sentence as set forth in Title 18, United States Code, Section 3742.

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V. CONCLUSION

Defendant Pascale McAtee broke the trust of her union and fellow members, stole \$82,903.66, and did her best to destroy LU 161 rather than face the consequences. A custodial sentence of ten months followed by two years of supervision is no more burdensome than necessary to address the factors of Section 3553.

DATED this 22nd day of August, 2017.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 22, 2017, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the attorney of record for the defendant.

s/Jennifer Shauberger
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